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**3. Venue (§ 8\*)—Transitory Personal Actions.**—Under Code 1904, § 3058, the circuit court had original and general jurisdiction of all civil cases at law, including a transitory action for personal injuries, regardless of where the cause of action arose, where the defendant company was served with process under sections 3225 and 3227, and jurisdiction of the cause does not depend upon sections 3214 and 3215.

**4. Abatement and Revival (§ 3\*)—Courts (§ 39\*)—Jurisdiction—Mode of Objection.**—Code 1904, § 3260, requiring objection to certain defects of venue affecting jurisdiction to be made by plea in abatement, has no application where the defendant is not before the court, nor where the subject-matter of the action or suit, although within its territorial jurisdiction, is not in fact before the court, and in such cases the defect may be pleaded in bar or by other defense, as by motion to quash process of summons or dismiss action. The court should dismiss, upon its own motion where such facts appear.

**5. Pleading (§ 35\*)—Venue—Surplusage.**—In an action for personal injuries, an allegation that the injuries were inflicted in the city of Lynchburg was a wholly unnecessary averment for the purpose of laying venue, and under Code 1904, § 3244, may be treated as an allegation of original venue or fact venue not affecting the place of trial, or as matter of description, or mere surplusage.

Error to Circuit Court, Campbell County.

Action by Thomas W. Moore against the Norfolk & Western Railway Company. Judgment for plaintiff by default, and defendant's motion to dismiss the case for lack of jurisdiction was allowed, and plaintiff's motion to be allowed to amend his declaration was overruled, and plaintiff brings error. Reversed.

*A. H. Light*, of Rustburg, for plaintiff in error.

*F. S. Kirkpatrick*, of Lynchburg, and *W. H. Mann*, of Petersburg, for defendant in error.

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VIRGINIAN RY. CO. *v.* et al. AVIS.

March 13, 1919.

[98 S. E. 638.]

**1. Railroads (§ 73 (4)\*)—Construction—Use for Depot Purposes.**—Under deed conveying land to railway company "to be used for depot purposes and facilities connected therewith," held, company was to use such part of land as it needed for a depot and residue exclusively for facilities connected therewith, so that company could not lease the residue to a third person for other uses.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 550.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**2. Contracts (§ 152\*)—Language—Ordinary Signification.**—In determining the meaning of what the parties have said in a written contract of conveyance, the language used is to be taken in its ordinary signification, unless it has acquired a peculiar meaning or unless the context plainly shows that it is used in some peculiar sense, and, if when so read the meaning is plain, the instrument must be given effect accordingly.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 405.]

**3. Contracts (§ 169\*)—Construction—Ambiguity—Situation of Parties.**—If the meaning is ambiguous, then unless the parties have, by their subsequent unequivocal conduct, placed a practical construction upon their language, the rule to be first applied is for the court to place itself as nearly as possible in the situation of the parties at the time of the execution of the instrument, and consider the facts and circumstances attending the same.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 395.]

**4. Deeds (§ 90\*)—Construction against Grantor.**—The rule that the language in a deed poll must be construed most strongly against the grantor is not a favorite and is generally said to be one of last resort when all other rules of construction have failed.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 419.]

**5. Covenants (§ 21\*)—Construction in Favor of Free Alienation.**—The rule that restrictive covenants are not favored simply means that all doubts are to be resolved in favor of the free alienation of realty.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 746.]

**6. Covenants (§ 21\*)—Construction—Intention of Parties.**—Neither the rule that the language in a deed poll must be construed most strongly against the grantor, nor the rule that restrictive covenants are not favored, can operate when there is no room for doubt as to the intention of the parties:

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 746.]

**7. Injunction (§ 62 (1)\*)—Enforcement of Covenants—Use of Property.**—Where a grantor has clearly restricted the use of land granted and the restriction itself is not illegal, the covenant creates a trust which, in a proper case, courts of equity will enforce by means of an injunction against an inconsistent use.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 591.]

**8. Contracts (§ 143\*)—Deeds (§ 90\*)—Construction.**—Courts cannot read into contracts and conveyances language which will add to or take from the meaning of the words already contained therein.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 395.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Appeal from Circuit Court, Isle of Wight County.

Suit by James E. Avis against the Virginian Railway Company and others. From the decree rendered, defendants appeal. Affirmed.

*Loyall, Taylor & White* and *G. A. Wingfield*, all of Norfolk, and *Hugh L. Holland*, of Suffolk, for appellants.

*Ino. N. Sebrell, Jr.*, of Norfolk, for appellee.

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ATLANTIC COAST LINE R. CO. *v.* TYLER.

March 13, 1919.

[98 S. E. 641.]

**1. Appeal and Error (§ 1002\*)—Review—Verdict on Conflicting Evidence—Errors of Law.**—Verdict of jury on conflicting evidence is conclusive on Supreme Court, and will not be disturbed unless some harmful error of law was committed by the trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

**2. Evidence (§ 73\*)—Presumption—Compliance with Statute.**—In action against railroad for injuries at crossing, there is a presumption, from the fact that the railroad erected gates, that they were erected in obedience to a city ordinance.

**3. Appeal and Error (§ 231 (5)\*)—Reservation of Grounds of Review—Objection to Ordinance.**—In action for injuries at a railroad crossing, where defendant objected to introduction of city ordinance requiring vertical arm gates at crossing, without specifying any ground therefor, it cannot complain on appeal that ordinance was inadmissible because relating only to gates to be erected when deemed necessary and required by committee on streets.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

**4. Railroads (§ 307 (4)\*)—Injuries at Crossing—Duty to Erect Gates—Negligence.**—It was absolute duty of railroad to erect vertical arm gates at city crossing as required by city's ordinance, not merely its duty to use ordinary care to obey the ordinance, and any failure to erect such gates, if the sole proximate cause of injury to plaintiff, was negligence sustaining recovery.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 361.]

**5. Railroads (§ 317\*)—Injury at Crossing—Instruction.**—In action against railroad for injuries to plaintiff at city crossing, trial court properly instructed that if train struck plaintiff's buggy was operated at more than four miles an hour, speed fixed by ordinance, railroad was negligent, and if jury believed such negligence was prox-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.